CRIMINAL LAW REFORM

(Report of the Committee of the American Prison Association[1])

EDWARD D. DUFFIELD, Chairman

Owing to the fact that the membership of this Committee has been widely distributed from a geographical standpoint, it has been impossible for the Committee to hold a meeting and its conferences have necessarily been conducted through correspondence. Under these circumstances the Chairman has endeavored to formulate the views of the Committee as expressed in correspondence, but must assume full responsibility for the formulation of the report and the method of presentation.

The determination of what reforms are needed in the criminal law would seem to require as a preliminary an examination of the object and purpose of the criminal law in order to ascertain how nearly that object is now attained. The main, if, indeed, not the sole object of criminal law is the protection of society, or, as Blackstone[2] puts it, "the end or final cause of human punishment is not by way of atonement of expiation for the crime committed; for that must be left to the just determination of the Supreme Being; but as a precaution against future offenses of the same kind. This is effected three ways: Either by the amendment of the offender himself; . . . or, by deterring others by the dread of his example from offending in the like way; . . . or, by depriving the party injuring of the power to do future mischief."

We are very likely to swing from one extreme to another in the position we take on any question. The solution of the problem is usually found somewhere between the two extremes. For years we have sought to attain the end of human punishment by adopting the last two methods suggested, and have given little consideration to the amendment of the offender himself. Suddenly we have come to a realization of the futility of success in eliminating the reformation of the criminal as a means of attaining the end which we seek. Formerly the sole consideration was given to the punishment inflicted. Now we seem to consider the criminal and to disregard the crime. Somewhere between these two extremes must be found the proper

[1]Presented at the annual meeting of the American Prison Association, New Orleans, November, 1917.

[2]Commentaries, Vol. IV, Chap. 1, Sec. 2.

method to adopt in order to protect society. The criminal, on the one hand, must be reformed; and, on the other, those who are not yet criminals must be deterred from becoming criminals. Because we have reached the conclusion that inhuman treatment is not an essential part of punishment we need not blind ourselves that punishment properly administered will play a part in the rehabilitation of the criminal and will also act as a deterrent.

We must not forget that society as well as the criminal has rights which must not be infringed upon, and in all consideration of changes and alterations, which admittedly are needed to adjust the criminal law of today to a more ideal condition, we must not too lightly dismiss the idea of punishment and overemphasize the idea of consideration for the criminal. Somewhere there must be found a middle ground in which society actuated by humane motives and safeguarding the criminal against cruelty and abuse will furnish protection for itself by adequate penalty.

Referring again to Blackstone, he, although living at a time when capital punishment was meted out to those guilty of the most trivial offenses, seems to have had a clear vision of the road to be followed in order to attain the end sought. He says: "Though the end of punishment is to deter men from offending, it can never follow from thence, that it is lawful to deter them at any rate and by any means; since there may be unlawful methods of enforcing obedience even to the justest laws." "Punishment," he says, "ought always to be proportioned to the particular purpose it is meant to serve, and by no means to exceed it." He concludes the first chapter of the fourth book of his commentaries, that devoted to crimes, with the following observation, which seems to us most apt:

> "We may observe that punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in preventing crimes, and amending the manners of a people, than such as are more merciful in general, yet properly intermixed with due distinctions of severity. It is the sentiment of an ingenious writer, who seems to have well studied the springs of human action, that crimes are more effectively prevented by the certainty, than by the severity, of punishment. . . . It is a kind of quackery in government, and argues a want of solid skill, to apply to same universal remedy, the *ultimum supplicium,* to every case of difficulty. It is, it must be owned, much easier to extirpate than to amend mankind; yet that magistrate must be esteemed both a weak and a cruel surgeon, who cuts off every limb, which through ignorance or indolence he will not attempt to cure."

We doubt whether there could be enunciated today, and with the enlightenment of the twentieth century, a clearer direction for those

whose duty it is to enact and enforce criminal law. Unfortunately, we have today magistrates who adopt the easier course of extirpating rather than seeking to amend mankind. Lawmakers apparently have not learned that *certainty* rather than *severity* of punishment will prove in the long run the greater deterrent. At a time and in a country in which unpunished crimes are steadily upon the increase, where life is treated as cheaply as it is in the United States of America today, it might be well for lawmakers and magistrates alike to read with care the views of the great exponent of the English Common Law, and apply some of the principles he recognizes.

Within the limit of a report such as this, it is, of course, impossible to discuss in detail the various reforms which might be applicable to the criminal law of the several states. We dismiss them necessarily with the general observations above made. There are some matters, however, which seem to require particular consideration.

Indeterminate Sentence

It is unnecessary, we are sure, to an Association such as this to discuss the merits of the Indeterminate Sentence. By common consent those interested in prison reform have reached the conclusion that it furnishes the best method of fixing the extent of punishment it is necessary for society to inflict in order to produce the result sought. It is now the law of many states. It should be the purpose of this Association to see that it is universally adopted. At the present time the constitutionality of some of these laws are under attack. In order that this law may have effect it may, therefore, be necessary to procure in some states constitutional amendments. We would suggest that the Association either through its Secretary, or through the next Committee on Criminal Law Reform secure a compilation of the various statutes, indicating those which have stood the test of constitutionality, and those which have failed, in order that a model may be perfected, and that efforts may be made where it conflicts with constitutional mandate to procure an amendment to the constitution permitting its enactment.

Before dismissing this subject there is one point which we feel should be emphasized. The success or failure of the indeterminate sentence depends almost entirely upon its administration. The determination as to whether reformation of the criminal has been secured is, of course, a question of the greatest difficulty. It cannot be done by any set rule or method. No machinery yet devised by man can mechanically reach a satisfactory conclusion upon this point. As long

as human nature remains as it is, individual consideration must be given to individual cases. The fear we have is that where a prisoner has been committeed to an institution for a comparatively trivial offense, and either through inadvertence or because he does not fit into the method adopted by the parole board, his incarceration has been prolonged to a period that to the average man would seem grossly excessive, or, where for a serious offense it is assumed that reformation has occurred in a miraculously short time, criticism may become so severe as to condemn the whole system.

We earnestly urge upon those who are in charge of the administration of this law that they will give of the time and thought necessary to the solution of each individual case, and will not adopt the easier system of attempting to provide for some mechanical test, or seek for self-operating machinery.

Fee System

The fee system is in its nature vicious, and particularly so in the administration of criminal law. Many states have abolished it in its entirety, but, unfortunately, other states have retained it. We can imagine no defense which can be urged for its continuance. It cannot maintain the claim of economy, nor does it find a justification from any economic or scientific standpoint. Surely it needs no argument to demonstrate that the income of one engaged in the administration of that branch of the law which determines the freedom or imprisonment of his fellow-man should not have his income dependent in any way upon the number of cases which he handles.

We strenuously urge that an effort be made by this Association to secure the abolishment of the fee system wherever it exists.

State Use

The state use system in the employment of labor is one that is coming into operation gradually, and it seems to be the best thing we know so far. Why these prisoners should not also be employed in the production of articles for use by the federal government, it is difficult to understand. This would be very valuable in this period of stress. The only thing that stands in the way, as we understand it, at this time, is an executive order issued by President Roosevelt. It would seem desirable to ascertain whether upon a proper presentation this order could not be revoked, and some arrangement made for the utilization of prison labor along the line indicated.

Speedy Trial

The constitution of the United States provides that every citizen "shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed."

The constitutional right to a speedy trial is, however, at present frequently more honored in the breach than in the observance. An inspection of many of our county jails would find prisoners accused, but untried, who are unable to give bail, held for long periods of time for comparatively trifling offenses. While it is difficult to suggest a remedy for this condition, it certainly calls for action. Public sentiment must be appealed to. If more courts are necessary to dispose of criminal cases, such courts should be created. If the delay is caused by neglect or carelessness of public officials, public sentiment must compel them to a sense of their duty. It is not a condition which can be justified on the plea of economy. The state cannot, upon a plea of poverty, infringe the constitutional right of a single individual, no matter how humble he may be. The very basis of constitutional government is that every individual may assert his constitutional rights and have them respected, even if opposed by the interest of others.

This is a plea for simple justice. Some method must be devised in each and every state to secure to the accused a speedy trial, which, as a citizen of the United States, its constitution gives him.

Other matters suggest themselves as worthy of consideration, but which may possibly best be postponed for further consideration. Such matters as the sentence and commitment of persons pleading guilty without an indictment, the change of procedure to permit the accused under suitable safeguards to be interrogated as to his alleged participation in the criminal act, or the permission of prisoners to enlist for service in the war under proper safeguards, and various matters of criminal procedure are among the topics which might be discussed.

We feel, however, that these may safely be left to the general consideration of the Association or referred to the next Committee when appointed.